

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: : Case No. 23-53016
roll: Bicycle Company, LLC, et. al. : Chapter 11, Subchapter V
: Jointly Administered
Debtors. :
: Judge John E. Hoffman, Jr.

**DUBLIN PLAZA, L.P.'S
MOTION FOR RELIEF FROM AUTOMATIC STAY UNDER 11 U.S.C. § 362**

Dublin Plaza, L.P. (the “Movant” or “Landlord”), an Ohio limited partnership, by and through its undersigned counsel, pursuant to 11 U.S.C. §§362(d)(1) and (d)(2), files this *Motion for Relief from Automatic Stay* with respect to roll: Bicycle Company, LLC (the “Debtor”), an Ohio limited liability company, in order to serve a Notice to Leave Premises and to commence a state court action in forcible entry and detainer and to obtain a writ of restitution and complete a lock change and set-out of personal property, all pursuant to Ohio Revised Code §1923, against Debtor, debtor-in-possession in the above captioned case, and affiliated entities, for a certain commercial premises hereinafter defined. The grounds for this Motion are set forth in the accompanying Memorandum In Support.

HARRIS, MCCLELLAN, BINAU & COX, P.L.L.

/s/ Emily J. Jackson

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MEMORANDUM IN SUPPORT

Background

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

2. On August 31, 2023 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Since that date the Debtor has operated as a debtor-in-possession.

3. On or about January 14, 2020, Roll: Dublin, LLC d/b/a roll: Bicycle Company (“Dublin LLC”), a non-debtor entity, entered into a Lease Agreement with Landlord (the “Lease Agreement”) for the use of non-residential real property located at Dublin Plaza, storeroom number 2020, containing approximately 3,000 square feet of gross leasable area in the shopping center, and having an address of 317 W. Bridge Street, Dublin, OH 43017 (the “Premises” or the “Dublin Location”). A true and correct copy of the Lease Agreement is attached hereto as **Exhibit "A."** The Lease Agreement's initial term is for sixty (60) months.

4. The Debtor and Dublin, LLC are affiliated, but separate entities.

5. Debtor is not the tenant under the Lease Agreement, but upon information and belief, the Debtor is in possession of the Premises. According to the Debtor’s testimony at the 341 Meeting of Creditors, Debtor is operating a bicycle shop business from the Premises.

6. Pursuant to the Lease Agreement, Dublin LLC is currently required to pay Movant \$4,500.00 per month for base rent, plus additional rent for common area maintenance, real estate taxes, and insurance. The total current monthly rent is \$5,958.87.

7. Dublin LLC is in default under the Lease due to non-payment of rent. Specifically, as of petition date, Dublin LLC was indebted to Movant for accrued rent totaling \$30,221, and as been in arrears since at least November 1, 2022. Moreover, neither Dublin LLC nor the Debtor has paid post-petition rent as it becomes due. A copy of the ledger of the amount due as of September 18, 2023 is attached hereto as **Exhibit “B.”**

8. The Debtor has failed to pay rent even though this Court has approved the payment of rent under the *Interim Order Authorizing Limited Use of Cash Collateral and Granting Adequate Protection*, dated September 1, 2023 (Doc. No. 26), and under the *Agreed Second Interim Order Authorizing Debtor Use of Cash Collateral*, dated September 8, 2023 (Doc. No. 50) (collectively, the “Cash Collateral Orders”), both of which attach a budget with a line item for the payment of the rent at the Dublin Location.¹

9. Dublin LLC’s failure to pay the required rent and late charges is a material default under the Lease Agreement.

10. Debtor has refused to pay the rent even though it is occupying the Premises and even though it is permitted to pay the rent under the Cash Collateral Orders.

Relief Requested

11. 11 USCS § 362(d) provides for the relief from automatic stay and states in pertinent part:

- (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-(1) for cause, including the lack of adequate protection of an interest in property of such party in interest...

¹ The Cash Collateral Orders have a scrivener’s error as to the amount of the monthly rent, but clearly contemplate the payment of the rent.

12. Adequate protection is not specifically defined in the Bankruptcy Code, however examples are set forth in 11 U.S.C. §361 which states in relevant part:

“When adequate protection is required under section 362...of this title of an interest of an entity in property, such adequate protection may be provided by...(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity’s interest in such property.” Id. See In re: London Tiles, Inc., 35 B.R. 681 (N.D. Ohio December 21, 1983).

13. Landlord, as owner of the Premises, is a party in interest, seeks relief from stay to pursue its *in rem* remedies under the Lease Agreement, pursuant to 11 U.S.C. §§ 362(d)(1) and (2). Relief is permissible under 11 U.S.C. § 362(d)(1) for cause shown, including lack of adequate protection of Movant’s interest in the Premises. In this instance, cause exists due to the failure to pay post-petition rent. To the extent Dublin LLC has sublet or assigned (without authorization) the lease to the Debtor, the Debtor’s failure to pay post-petition rent is a violation of Section 365(d)(3) of the Bankruptcy Code, which requires a debtor to “timely perform all the obligations of the debtor. . . arising from and after the order for relief under any unexpired lease of nonresidential real property. . .” The Debtor, by its own admissions, is occupying the Premises, running its business from the Premises, and is not paying rent. Thus, the Landlord lacks adequate protection and has shown cause based upon the Debtor’s failure to comply with the Bankruptcy Code. Debtor has no right to continued occupancy of the Premises.

14. Relief is also appropriate under 11 U.S.C. § 362(d)(2) as the Debtor does not have any equity in the Dublin Location and it is not necessary to an effective reorganization of the Debtor. Upon information and belief, the Dublin Location is not a profitable location for the Debtor. Debtor’s continued occupation of the Premises without payment of rent creates an administrative expense against the estate.

WHEREFORE, Movant, DUBLIN PLAZA, L.P., respectfully requests this Court enter an order granting it relief from the automatic stay to pursue its rights *in rem* against the Premises and not *in personam* against the Debtor, including an order permitting Movant to issue and serve a Notice to Leave Premises, to commence a state court action in forcible entry and detainer and to obtain a writ of restitution and complete a lock change and set-out of personal property in the Premises, all pursuant to Ohio Revised Code §1923, in order to have possession of the Premises restored pursuant to state court procedures; and for such other and further relief as is just and proper under the circumstances of this case.

Dated this 20th day of October, 2023.

HARRIS, MCCLELLAN, BINAU & COX, P.L.L.

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NOTICE AND CERTIFICATE OF SERVICE PURSUANT TO LBR 4001 AND 9013

The undersigned hereby certifies that on October 20, 2023, a true copy of the foregoing *Dublin Plaza L.P.'s Motion For Relief From The Automatic Stay Under 11 U.S.C. § 362 and Notice of Motion*, electronically through the court's ECF System at the email address registered with the court and/or by regular U.S. Mail, on the parties whose names and full addresses are listed below and for notice that the Motion for Relief from Stay has been filed. Unless a written responsive filing or memorandum in opposition is timely filed with the Court and served on the undersigned the stay may be lifted by the Court without further notice.

Heartland Bank
430 N. Hamilton Road
Whitehall, OH 43213

And creditors and parties listed on attached Exhibit "C".

/s/ Emily J. Jackson
Emily J. Jackson (0078425)